

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

UGOCHUKWU GOODLUCK NWAUZOR,
FERNANDO AGUIRRE-URBINA,
individually and on behalf of all those
similarly situated,

Plaintiffs/Counter-Defendants,

v.

THE GEO GROUP, INC.,

Defendant/Counter-Claimant.

Case No. 3:17-cv-05769-RJB

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

Case No. 3:17-cv-05806-RJB

**DEFENDANT THE GEO GROUP, INC'S
REPLY IN SUPPORT OF PROPOSED
JURY INSTRUCTION REGARDING
STATEMENT OF INTEREST**

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REPLY IN SUPPORT OF PROPOSED
JURY INSTRUCTION REGARDING
STATEMENT OF INTEREST
(3:17-CV-05769-RJB); (3:17-CV-05806-RJB)

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Pursuant to FRE 201, and this Court's ruling on the record, the GEO Group, Inc. ("GEO"), hereby files this reply in support of its oral motion to take judicial notice of the Government's Statement of Interest filed in this case.

On Friday, the Court ruled that GEO could have the opportunity to admit the Statement of Interest to rehabilitate the testimony of Bruce Scott, explaining:

[T]he only justification at this point for admitting it is to rehabilitate the witness, I guess, because I think he testified that he didn't see anything in writing from . . . from ICE. It is a very narrow -- I think the door was opened, but it was a very narrow door. I don't know what his testimony will be about that. The document itself, you know, I don't know if it is within the scope of appropriate rehabilitative testimony, because I don't remember specifically what Mr. [Scott's] testimony was that's at issue here.

Tr. Trans. October 22, 2021, pg. 7 The Court went on to identify one key passage that was both pertinent and relevant to the case and Mr. Scott's prior testimony:

The highlighted reference that we are talking about here . . . refers to the 25 constraints. [The document states that] it is inappropriate to construe the phrase "applicable laws" to include the MWA here.

Tr. Trans. October 22, 202, pg. 7. This passage that was identified by the Court is directly relevant to the witness's testimony that opened the door to the issue here: whether there exists a written document stating that the minimum wage does not apply. To that end, the Court ruled that whether GEO could inquire about the statement would "depend on the witness's testimony that you are trying to rehabilitate or complete or whatever. That limited portion may be admissible if a foundation is laid." *Id.* at 9.

GEO has reviewed the testimony at issue and reiterates its position that further questioning to rehabilitate the witness is necessary. Mr Scott under cross-examination by Private Plaintiffs' counsel, stated (as is reflected on page 90 of the Oct 21, 2021 trial transcript at lines 16-31:

1 **My understanding is that ICE has said that the Washington State Minimum**
2 **Wage Act does not apply to the contract facility or the voluntary work**
3 **program.**

4 Private Plaintiffs' counsel said in response:

5 **Well, let's talk about that. In business have you heard the phrase, 'If it isn't**
6 **written down, it didn't happen?'**

7 Private Plaintiffs' counsel then played a short video clip of Mr Scott from an earlier date wherein
8 he said that he had not inquired of ICE with respect to their position on the applicability of the
9 state's Minimum Wage Act to detainee workers at the Center. GEO then attempted to elicit
10 testimony on redirect to allow Mr. Scott to identify the basis of his understanding that ICE has
11 taken a position that the MWA does not apply to the voluntary work program. The following
12 colloquy took place:

13 **Q:** "Plaintiffs' counsel asked you if ICE had said that the State's Minimum
14 Wage Act applied to the detainees in the voluntary work program at the
15 center. Do you remember that question?"

16 **A:** "I do."

17 **Q:** "He also asked you—he also said to you, "Nothing in writing from ICE
18 that says otherwise." He asked you if that wasn't true that had you nothing in
19 writing from ICE that says otherwise?"

20 **A:** "I remember him saying that."

21 **Q:** "What's your understanding of ICE's position on this issue?"

22 Plaintiffs and the State's counsel objected and the Court sustained the objections. Later, at Page
23 122, Line 11-25, continued on Page 123 Lines 1-6, GEO argued, "Plaintiffs have opened a door
24 widely, not a crack, but widely, with respect to whether or not we can introduce the government's
25

1 statement of interest in this case.” On Friday, this Court agrees that the door is at least, cracked
 2 open. With the benefit of the transcript, the Court can now confirm that its ruling was correct.
 3 Accordingly, it is appropriate for the Court to afford GEO the opportunity to brief foundational
 4 questioning to rehabilitate the witness. Mr. Whitehead asked this witness if ICE had said that the
 5 State's Minimum Wage Act applied to the detainees in the program at the center. He also argued
 6 to the witness that he had nothing in writing from ICE that says otherwise. As the Court and the
 7 parties are aware, in fact, he does. Accordingly, GEO should be permitted to introduce that
 8 testimony through Mr. Scott.¹

9 Accordingly, GEO requests that Mr. Scott be permitted to take the stand, either out of the
 10 jury’s presence in the form of a proffer of testimony, or with the jury, by way of completing the
 11 testimony he began last Thursday that we wish to rehabilitate through the redacted use of the
 12 letter. Alternatively, GEO offer to introduce the agreed portion of the letter that is pertinent to the
 13 rehabilitation of his testimony in the form of an agreed jury instruction to the effect that the jury
 14 may accept as true that Mr Scott has seen and read a letter from govt saying that the federal govt
 15 does not believe the state of Washington’s Minimum Wage Act is applicable to the detainee
 16 workers participating in the Voluntary Work Program at the Northwest Detention Center. To be
 17 clear, GEO is not asking to place the Statement of Interest before the jury in full. GEO is simply
 18 asking for the Court’s permission to introduce brief rebuttal evidence that was put directly at
 19 issue by Plaintiffs line of questioning.

20 Dated this 25th day of October, 2021.

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 25 ¹ Plaintiffs counsel raises the timing of the filing of the Statement of Interest with respect to
 26 the date of Mr. Scott’s deposition. This issue goes to the weight, not the admissibility of the
 27 evidence. Any additional testimony would permit both parties to clarify the timing of Mr.
 Scotts understanding.

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PROOF OF SERVICE

I hereby certify on the 25th day of October, 2021, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing via the Court's CM/ECF system on the following:

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PROPOSED JURY INSTRUCTION REGARDING
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